

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRANK HINTERMAIER

Appeal No. 2005-2491
Application No. 09/161,196¹

ON BRIEF

Before PAK, WALTZ, and KRATZ, Administrative Patent Judges.

PAK, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 1, 3, 5 and 7 through 12. Claims 2, 4, 6 and 13 through 24, the other claims pending in the above-identified application, stand withdrawn from consideration by the examiner

¹ Application for patent filed September 25, 1998.

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as being directed to a non-elected invention. We have jurisdiction pursuant to 35 U.S.C. § 134.

APPEALED SUBJECT MATTER

Claim 1 is representative of the subject matter on appeal and reads as follows:

1. A capacitor in an integrated semiconductor circuit, comprising:

a semiconductor substrate having a doped region formed therein;

a first electrode connected to said doped region;

a second electrode;

a capacitor dielectric insulating said first electrode from said second electrode; and

a barrier layer disposed below said capacitor dielectric, said barrier layer consisting essentially of a compound formed from a transition element and a material selected from the group consisting of phosphorus, sulfur, and arsenic.

PRIOR ART REFERENCE

The prior art references relied upon by the examiner are²:

Summerfelt et al. (Summerfelt)	5,566,045	Oct. 15, 1996
Kwakubo et al. (Kwakubo)	5,691,219	Nov. 25, 1997

² The examiner no longer relies on U.S. Patent 5,705,685 issued to Lyons et al. on Jan. 6, 1998, U.S. Patent 5,990,348 issued to Lyons et al. on Nov. 23, 1999, U.S. Patent 6,043,184 issued to Karmakar on Mar. 28, 2000 and U.S. Patent 6,060,419 issued to Wijesekera et al. on May 9, 2000.

REJECTION

Claims 1 and 7 through 9 stand rejected under 35 U.S.C. § 102(b) as anticipated by the disclosure of Summerfelt. Claims 1, 3, 5, and 7 through 12 stand rejected under 35 U.S.C. § 102(b) as anticipated by the disclosure of Kawakubo.³

OPINION

Having carefully reviewed the claims, specification and applied prior art, including all of the arguments and the evidence advanced by the examiner and the appellants in support of their respective positions, we agree with the appellant that the examiner has not established a prima facie case of unpatentability under Section 102. Accordingly, we reverse the examiner's Section 102 rejections for the reasons well articulated by the appellant in the Brief and the Reply Briefs.⁴

³ The examiner has withdrawn claim 4 from further consideration. Thus, claim 4 included in this rejection has been removed.

⁴ Having reviewed the examiner's Supplemental Answer, we are disheartened that the examiner fails to follow the instructions provided in the Remand Order dated October 31, 2003. It appears that the examiner still fails to address the countervailing evidence relied upon by the appellant in the Brief and the Reply Brief, refers to a wrong patent number not relevant to the presently claimed subject matter, improperly relies on the prior art references not positively included in the statement of rejection, and fails to correct the misquotation relied upon by the examiner in the earlier Answer.

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As correctly pointed out by the appellant in his Brief and Reply Briefs, the examiner has not demonstrated that Ga taught by Summerfelt is a transition element and that the claimed barrier layer is necessarily formed in Kawakubo.

CONCLUSION

In view of the foregoing, the decision of the examiner is reversed.

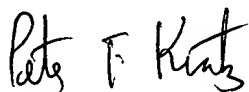
REVERSED



CHUNG K. PAK
Administrative Patent Judge



THOMAS A. WALTZ
Administrative Patent Judge



PETER F. KRATZ
Administrative Patent Judge

BOARD OF PATENT
APPEALS AND
INTERFERENCES

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